

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-099

April 7, 1998

PUBLIC UTILITIES COMMISSION
Inquiry into Standards of Conduct and
Other Requirements for Transmission &
Distribution Utilities and Affiliated
Competitive Electricity Providers

NOTICE OF INQUIRY

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY

In this Notice, we initiate an inquiry to obtain information on the following general matters:

- The appropriate standards of conduct for investor-owned transmission and distribution (T&D) utilities and their affiliated competitive electricity providers;
- How to track the kilowatt-hour sales of affiliated competitive electricity providers;
- The procedures for divestiture of investor-owned T&D utilities' affiliated competitive providers;
- Whether the sale of generation services by competitive providers within the service territory of a consumer-owned T&D utility would cause the consumer-owned T&D utility (COU) to lose its tax-exempt status and, if so, how to limit or prohibit such sales.

After review of the information, the Commission will initiate a proceeding to adopt rules on these matters.

II. BACKGROUND

The Maine Legislature enacted "An Act to Restructure the State's Electric Industry," (the Act) P.L. 1997, Ch. 316¹ that provides for retail competition for generation services beginning March 1, 2000. The Act contains specific provisions to govern the relationships and transactions between large investor-owned

¹The Act is codified at 35-A M.R.S.A. §§3201 - 3217.

T&D utilities (utilities with more than 50,000 retail customers)² and their affiliated competitive electricity providers and requires the Commission to adopt rules to implement and enforce those provisions. 35-A M.R.S.A. § 3205. The Act also requires the Commission to determine the extent of separation necessary to avoid cross-subsidization and market power abuses by small investor-owned T&D utilities (utilities with fewer 50,000 retail customers)³ and their affiliated competitive electricity providers and to adopt the rules to accomplish such separation. 35-A M.R.S.A. § 3206.

The Act further requires the Commission to adopt rules that limit or prohibit competitive providers from selling generation services in COUs' service territories if allowing such sales would cause the COUs to lose their tax-exempt status⁴. 35-A M.R.S.A. § 3207. The sections of the Act cited above are attached.

III. DISCUSSION - LARGE INVESTOR-OWNED TRANSMISSION AND DISTRIBUTION UTILITIES

A. Standards of Conduct -- 35-A M.R.S.A. § 3205(3)

The Act prohibits large investor-owned T&D utilities from selling electric energy or capacity to retail consumers after the beginning of retail access; they may, however, have an affiliated interest that sells energy or capacity to retail consumers. The Act allows such affiliated competitive electricity providers to sell energy or capacity to retail consumers inside and outside the affiliated T&D utility's service territory, except that the affiliated competitive electricity provider may not sell more than 33% of the total kWhs sold within the T&D utility's service territory and may not provide or bid to

²Bangor Hydro-Electric Company (BHE) and Central Maine Power Company (CMP) are currently the only large investor-owned T&D utilities within the State of Maine.

³Maine Public Service Company (MPS) is currently the only small investor-owned T&D utility within the State of Maine.

⁴The following are the COUs currently operating within Maine: Houlton Water Company (Elec. Dept.); Isle-Au-Haut Electric Power Company; Eastern Maine Electric Cooperative; Matinicus Plantation Electric; Van Buren Light & Power District; Kennebunk Light and Power Company; Swans Island Cooperative; Fox Islands Electric Cooperative; Town of Madison; and Central Monhegan Power Company.

provide more than 20% of the standard-offer electricity⁵ within the T&D utility's service territory. 35-A M.R.S.A. § 3205(2). Standards of conduct to govern the relationship and transactions between T&D utilities and their affiliated competitive electricity providers are prescribed by the Act. 35-A M.R.S.A. § 3205(3)(A - P). While these provisions are generally explicit and detailed, we seek comment on certain aspects that may require further definition for purposes of our rules.

1. General Standards

Question 1 - *Are there other standards or requirements in addition to those contained in 35-A M.R.S.A. § 3205(3) that the Commission should adopt regarding affiliated competitive providers of large investor-owned T&D utilities? If so, please describe what additional standards should be adopted and why.*

Chapter 820 of the Commission's rules prescribes standards of conduct for utilities that engage in non-core activities. It seems reasonable to assume that after March 1, 2000, the sale of electricity will be considered a non-core activity of investor-owned T&D utilities. To the extent the Act or the Commission's rules adopted pursuant to the Act include provisions more restrictive than the Chapter 820 requirements for T&D utilities' relationships with their affiliated competitive electricity providers, we presume the more restrictive provisions would apply. We seek comment on this presumption as well as other dynamics of these two sets of requirements. Specifically:

Question 2 - *Are there any provisions of section 3205(3) that are less restrictive or conflict with Chapter 820? If so, please suggest how such conflicts should be resolved.*

Question 3 - *Should Chapter 820 be amended to include any of the requirements of section 3205(3)? If so, please explain why.*

Question 4 - *Please indicate which, if any, of the Act's requirements are already satisfied by Chapter 820? To the extent some of the Act's requirements are satisfied by Chapter 820 (e.g. separate accounting requirements), please indicate whether the Commission should take any further action on those items.*

Under section 3205(6) of the Act, if 10% or more of the stock of a large investor-owned T&D utility is purchased by an entity, neither that entity nor any related entity may sell electricity to retail consumers within the State of Maine. The term related entity is defined in section 3205(1)(D).

⁵The standard offer is the generation service that customers receive if they do not choose a competitive provider.

Question 5 - How should the Commission identify/monitor the existence and activities of a purchasing entity or a "related entity" to ensure compliance with section 3205(6)(A)?

Question 6 - In section 3205(1)(D)(4), if a person, or group of persons, are determined by the Commission to exercise "substantial influence" over an entity that purchases 10% or more of a T&D utility and those person(s) own more than 3% of the entity's voting securities, those person(s) are defined as a related entity. Should the Commission's rules define substantial influence? If so, please suggest how substantial influence should be determined and/or defined.

2. Standards that Prohibit Preferential Treatment of Affiliated Competitive Providers

The Act prohibits T&D utilities from giving preferential treatment to their affiliated competitive providers. 35-A M.R.S.A. § 3205(3)(A - F). Section 3205(3)(A) prohibits T&D utilities from giving preference to their affiliated competitive providers or the customers of their affiliated competitive provider in matters relating to any regulated product or service; section 3205(3)(B) requires that any products or services including any discount, rebate or fee waiver must generally be available to all customers and competitive electricity providers simultaneously; section 3205(3)(C) prohibits T&D utilities from providing regulated products or services to their affiliated competitive provider without making a sufficient offering to the market for those products or services; section 3205(3)(D) requires T&D utilities to process all requests for regulated products or services in the same manner and within the same period of time; section 3205(3)(E) prohibits T&D utilities from tying the provision of any regulated product, service or rate agreement to a service or product that involves an affiliated competitive provider; and section 3205(3)(F) prohibits T&D utilities from giving any preference to their affiliated competitive providers with respect to providing information.

Question 7 - Are there any other provisions, or clarifications to the provisions in sections 3205(3)(A - F), that should be included in the Commission's rules to prohibit T&D utilities from giving affiliated competitive providers preferential treatment? If so, please describe. Specifically, should the Commission rules define what constitutes a "sufficient offering" as used in section 3205(3)(C)?

Question 8 - To what degree should the Commission monitor compliance with sections 3205(3)(A - F)? Specifically, should

the Commission's rules include requirements for audits, informational filings, or record keeping in order to provide on-going monitoring for compliance with sections 3205(3)(A - F) or should the Commission simply react to complaint(s) or other information that might suggest potential violation(s) of sections 3205(3)(A - F)? If the former, please suggest specific requirements that should be included in the Commission's rules to provide on-going monitoring.

3. Standards Regarding Information Provided by the T&D Utility to Competitive Providers -- Both Affiliated and Non-Affiliated

The Act limits the information that T&D utilities can provide to competitive providers, both affiliated and non-affiliated. 35-A M.R.S.A. § 3205(3)(G - I). Section (G) prohibits T&D utilities from sharing with competitive providers (either affiliated or non-affiliated competitive providers) any market information acquired from a competitive provider (either an affiliated or a non-affiliated competitive provider) or any marketing information developed by the T&D utility in the course of responding to requests for distribution service.

Section (H) requires T&D utilities to keep a log of all requests for information made by competitive providers, both affiliated and non-affiliated. The log is required to include the date of the response to such requests and is subject to periodic review by the Commission. The Commission is required to establish categories of requests for information and to specify which, if any, categories are sufficiently trivial to be exempt from the log requirements.

Question 9 - *It seems reasonable to assume the term "log" at a minimum implies that the nature of the request and date of the request should be recorded. If this is not a reasonable assumption, please indicate what information should be recorded in the log. Beyond that, should the Commission require that the log include the names of the entities seeking information? Are there specific benefits that would be provided by the Commission's knowing which entities requested information? Would this present any confidentiality or other concerns? Does the statute imply, or should the Commission require, that requests made by affiliated competitive providers be identified as such in the log? What specific benefits would be provided by the Commission's knowing which requests were made by affiliated competitive providers? Would this present any confidentiality or other concerns? Should the log include the nature of the responses provided by the T&D utilities to the competitive providers? Are there specific benefits that would be provided by*

the Commission's knowing how the Company responded to the information requests? Would this present any confidentiality or other concerns?

Question 10 - It seems reasonable to interpret the language of the statute as requiring the Commission to establish as part of its rules, the categories of requests and to specify which categories of requests are sufficiently trivial as to be exempt from the log requirements. If this is not a reasonable assumption, please indicate under what process(es) the Commission should establish such categories and determine which categories should be exempt from the log requirements. If the Commission is required to make these findings under its rulemaking process, to the extent possible, please suggest how information requests might be categorized in the rule and which requests might be sufficiently trivial as to be exempt from the log requirements.

Section (I) prohibits T&D utilities from releasing any proprietary customer information without the customer's prior written authorization. As discussed above, Chapter 820 of the Commission's rules defines requirements for utilities engaging in non-core activities and includes requirements associated with customer information provided to an affiliate.

Question 11 - Should the Commission adopt the same definition for "proprietary customer information" for purposes of section 3205(3)(I) as used in Chapter 820 for customer proprietary information (CPI)? If not, please suggest an appropriate definition for "proprietary customer information" and indicate why it is more appropriate than the definition for CPI used in Chapter 820. Please also indicate whether, and if so why, the definition in Chapter 820 should be changed to be consistent with the suggested definition.

Question 12 - Do the requirements in Chapter 820 § (8)(A) satisfy the requirements of section 3205(3)(I) that T&D utilities obtain prior written authorization before releasing proprietary customer information? If not, how should the requirements differ from those included in Chapter 820? If so, does Chapter 820 fulfill the Commission's obligation under the Act to adopt rules that require the T&D utilities to obtain prior written authorization before releasing proprietary customer information?

Question 13 - Chapter 820 § (8)(A)(1) requires affiliates to "purchase any CSI or ACI [aggregate customer information] it wishes to use from the core utility at market value." Is there any reason not to require competitive electricity providers to purchase CSI and ACI from T&D utilities at the market value? If

so, please fully explain why. If so, are there any reasons not to require competitive electricity providers affiliated with T&D utilities to also pay the same market price for the CSI and ACI they wish to use?

Question 14 - *To what degree should the Commission monitor compliance with the standards of conduct set forth in 35-A M.R.S.A. § 3205(3)(G-I)? Specifically, should the Commission's rules include requirements for audits, additional informational filings, or record keeping in order to provide on-going monitoring or should the Commission simply react to complaint(s) or other information that might suggest potential violation(s)? If the former, please suggest additional specific requirements that should be included in the Commission's rules to provide on-going monitoring.*

4. Appropriate Separations Between T&D Utilities and Their Affiliated Competitive Providers

The Act addresses the appropriate separations that should exist between T&D utilities and their affiliated competitive providers. 35-A M.R.S.A. § 3205(3)(J - P). Section (J) prohibits T&D utilities from giving any appearance of speaking on behalf of their affiliated competitive providers. Further, this section prohibits both T&D utilities and their affiliated competitive providers from representing that benefits accrue to customers or others in the use of T&D utility services as a result of dealings with an affiliated competitive provider. Section (J) also prohibits T&D utilities from engaging in joint advertising or marketing with their affiliated competitive providers and from promoting or marketing any product or service offered by their affiliated competitive providers. This section requires the Commission to maintain a current list of all competitive providers. Further, this section requires that upon receiving a request for information regarding competitive electricity providers, T&D utilities must provide a randomly sequenced, non-alphabetized list of competitive providers. Finally, this section prohibits T&D utilities from promoting, in any way, their affiliated competitive providers.

Question 15 - *Do the restrictions in section 3205(3)(J) with respect to joint marketing and advertising prohibit affiliated competitive providers from using their T&D utility's name or logo? Does the Act prohibit non-affiliated competitive providers from using a T&D utility's name or logo (for example, if the rights to the name or logo were sold)? If not, should this be prohibited and does the Commission have the authority to do so?*

Section (K) prohibits the employees of T&D utilities from stating or providing an opinion to customers or potential customers regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices, or market share of any competitive provider -- affiliated or non-affiliated.

Section (L) prohibits T&D utilities from sharing employees with their affiliated competitive providers. It also requires that the employees of T&D utilities be physically separated from the employees of affiliated competitive providers. Section (L) does, however, allow the Commission to approve exemptions from these separation requirements if: (a) sharing of the employees or facilities would be in the best interest of the public; (b) sharing employees or facilities would have no anti-competitive effect; and (c) the costs of any shared employees or facilities can be fully and accurately allocated between the T&D utility and the affiliated competitive provider.

Question 16 - *Should the Commission define "physically separated" in its rules? If so, should "physically separated" mean employees are in separate buildings, separate floors of a single building, separate areas of a single floor or is there some other definition of "physically separated" the Commission should consider?*

Question 17 - *Because a T&D utility may never actually request an exemption pursuant to §3205(3)(L), it might be more efficient to defer deciding what specific evaluation criteria should be used to evaluate whether the standards for granting exemptions under §3205(3)(L) have been met until such a time as a request for an exemption is filed. However, if this assumption is incorrect and these details should be included within the Commission's rules, please explain why such details should be included in the Commission's rules and suggest specific provisions.*

Section (M) requires T&D utilities and their affiliated competitive providers to keep separate books of accounts and records and that these books be subject to review by the Commission. Section (N) requires T&D utilities to establish and file with the Commission a dispute resolution procedures to address complaints alleging violations of 35-A M.R.S.A. § 3205. This section requires that T&D utilities designate in their dispute resolution procedures a person to conduct an investigation of the complaint and to communicate the results of the investigation to the claimant within 30 days after receipt of the complaint. The results to be communicated must include a

description of any action taken and the complainant's right to file a complaint to the Commission if not satisfied with the results of the investigation. This section also requires T&D utilities to maintain a log of all new, resolved and pending complaints and indicates that this log is subject to annual review by the Commission. The log is required, at a minimum, to include the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending.

Question 18 - *It seems reasonable to interpret the language of section 3205(3)(N) as not requiring the Commission to approve the dispute resolution procedures filed by T&D utilities. If this is an incorrect interpretation of this language, please explain why. Even if Commission approval is not required by the Act, should Commission approval be required for such procedures? Is the Commission prohibited in any way from requiring that it approve such procedures?*

Question 19 - *What other information, if any, should the log required by section 3205(3)(N) include? Specifically, should the log include: (a) the person's name or entity's name that filed the complaint? (b) the date the complaint was filed? (c) if applicable, the date the complaint was resolved?*

Question 20 - *Does the annual review language prohibit, in any way, the Commission from reviewing this log more frequently than annually? Does the annual review language require the Commission to review the log at least annually?*

Section (P) requires each T&D utility to file with the Commission, and maintain in a public place, current written procedures implementing the standards of conduct established by section 3205 and the Commission's rules adopted pursuant to this section. Section 3205(P) requires the procedures be written in sufficient detail that customers and the Commission can determine whether or not the T&D utilities are in compliance with section 3205.

Question 21 - *It seems reasonable to interpret the language of section 3205(3)(P) as not requiring the Commission to approve the written procedures filed by T&D utilities pursuant to this section. If this is an incorrect interpretation of this language, please explain why. Even if Commission approval is not required by the Act, should Commission approval be required for such procedures? Is the Commission prohibited in any way from requiring that it approve such procedures?*

Question 22 - The language of section 3205(3)(P) requires that T&D utilities file "current" written procedures with the Commission. It seems reasonable to interpret this language as requiring the T&D utilities to file all modifications to the procedures with the Commission within a reasonable amount of time. If this is a correct interpretation of this language, what is a reasonable amount of time? If this is an incorrect interpretation of this language, please explain why. If Commission approval should be required for these written procedures, should Commission approval also be required for all modifications to the procedures?

Question 23 - To what degree should the Commission monitor compliance with section 3205(3)(J - P)? Specifically, should the Commission's rules include requirements for audits, additional informational filings, or record keeping or should the Commission simply react to complaint(s) or other information that might suggest potential violation(s)? If the former, please suggest additional specific requirements that should be included in the Commission's rules to provide on-going monitoring.

B. Rules -- 35-A M.R.S.A § 3205(4)

Section 3205(4) requires the Commission to adopt rules implementing the provisions of section 3205. It specifically requires the Commission to adopt rules: (1) to govern the tracking of the kWh sales by a T&D utility's affiliated competitive providers as compared to the total kWhs within that T&D utility's service territory; (2) to govern the procedure for divestiture of a T&D utility's affiliated competitive provider as required under certain circumstances under this section; and (3) to establish the standards of conduct for T&D utilities and their affiliated competitive providers. This section also requires T&D utilities, beginning on the effective date of retail access and annually thereafter, to provide each employee with a copy of the rules adopted under section 3205 and to post a copy of the rules prominently in every employee location. The discussion regarding the rules to govern divestiture as required in certain circumstances is included in Section III(C) of this Notice and the discussion regarding the standards of conduct is included in Section III(A) of this Notice. With respect to the remaining portions of section 3205(4), however:

Question 24 - Pursuant to section 3205(4)(A), what requirements should the Commission adopt in its rules regarding tracking of kWh sales by affiliated competitive providers? Specifically, should the tracking of kWhs sold by affiliated competitive providers be done in a way that defines the 33% limit prescribed in 35-A M.R.S.A. § 3205(2) as a limit on the kWhs sold in an

hour? A day? A month? Annually? Because the kWhs sold will depend on customers' usage, it could be problematic to expect affiliated competitive providers to be able to forecast their sales precisely. Should the Commission's rules allow for some tolerance with regard to the maximum kWhs that may be sold by an affiliated competitive provider within its T&D utility's service territory? If so, what degree of tolerance should be adopted? Does the Commission have the authority to allow sales by affiliated competitive providers to exceed 33% of the total sales in their T&D utilities' service territory -- in an hour? In a day? In a month? Annually? If not, should the Commission's rules prescribe a lower limit than 33% to allow for imprecision or should the Commission's rules adopt the 33% limit and leave it to the affiliated competitive providers to allow themselves enough margin to avoid violating the 33% limit?

Question 25 - What is likely to be the most appropriate source for obtaining the data necessary to perform this kWh tracking? To what degree of precision will such data likely be available? Hourly? Daily? Monthly? Annually? How much time is likely to be necessary between the time sales occur and the time the data are available in a form that would allow an analysis of whether an affiliated competitive provider was in compliance with the 33% limit?

Question 26 - Should the Commission adopt an administrative penalty for violations of the 33% limit? If so, should it be the \$10,000 per day administrative penalty included in section 3205(5)? If not, please suggest an alternative penalty and state why you believe it more appropriate.

Question 27 - Chapter 301 of the Commission's rules prescribes the requirements associated with the standard offer providers. Because Chapter 301 contemplates that standard offer providers will offer to provide a percentage of the total standard offer requirements rather than a number kWhs, it does not appear that similar questions will arise with respect to the 20% limit on affiliated competitive providers making standard offer sales. 35-A M.R.S.A. §3205(2). Please comment on whether this is a correct assumption and whether the Commission should adopt any additional requirements to those included in Section 5 of Chapter 301.

Question 28 - To what degree should the Commission monitor compliance with the requirement that T&D utilities provide copies of the rules to each employee and to post the rules prominently in every employee location? Specifically, should the Commission's rules include requirements for audits, additional

informational filings, or record keeping in order to provide on-going monitoring for compliance with this requirement or should the Commission simply react to complaint(s) or other information that might suggest potential violation(s). If the former, please suggest additional specific requirements that should be included in the Commission's rules to provide on-going monitoring.

Question 29 - Should the Commission's rules define "every employee location?" If so, should it be defined as every office, every floor, every common area, every building or would some other definition be more appropriate?

Question 30 - Should the Commission require T&D utilities to produce and distribute an employee manual describing how employees should comply with the standards of conduct included in 35-A M.R.S.A. §3205(3) and the Commission's rules?

C. Divestiture of T&D Utilities' Affiliated Competitive Providers Required Under Certain Circumstances -- 35-A M.R.S.A. §§ 3205(5), 3205(6) and 3205(7)

Sections 3205(5) and 3205(6) provide that under certain circumstances, T&D utilities may be required to divest their affiliated competitive providers. If such a divestiture is ordered by the Commission pursuant to these sections, section 3205(7) prohibits the T&D utility from having another affiliated competitive provider.

1. Divestiture Required Due to Violations

Section 3205(5) requires that a T&D utility divest its affiliated competitive provider if the Commission determines in an adjudicatory proceeding that the T&D utility or its affiliated competitive provider has knowingly violated any provisions of section 3205 or the rules adopted pursuant to this section and the violation resulted, or had the potential to result in, substantial injury to retail consumers or the competitive electric market. This section also allows the Commission to impose administrative penalties of up to \$10,000 per day for violations of section 3205.

Question 31 - Although section 3205(4) requires the Commission to adopt rules governing the procedure for divestiture of a T&D utility's affiliated competitive provider, such rules could be very general. Because a divestiture due to violations of section 3205 might never be necessary, it appears it might be more efficient to postpone considering the details of how to accomplish such a divestiture until such time as it becomes

necessary. However, if these details should be included in the Commission's rules, please explain why and suggest specific provisions.

Question 32 - *What, if any, provisions should the Commission adopt in its rules regarding the procedure for imposing administrative penalties pursuant to section 3205(5)?*

2. Divestiture Required Due to a Purchase of the T&D Utility

Under section 3205(6)(B), if the Commission determines that an affiliated competitive provider obtains an unfair market advantage as a result of an entity's purchasing 10% or more of the stock of a T&D utility, the Commission shall order that T&D utility to divest its affiliated competitive provider. This section requires the Commission to make its determination regarding the existence of an unfair market advantage in an adjudicatory proceeding. Section 3205(6) also requires that if the Commission orders such a divestiture, the T&D utility must complete the divestiture within 12 months of the order to do so, unless the Commission grants an extension. This section allows such an extension in order for the T&D utility to complete a divestiture process that has been initiated in good faith but has not been finalized within the 12 months. This section requires the Commission to oversee and approve all such divestitures.

Question 33 - *Because a divestiture due to such a sale might never be necessary, it appears that it might be more efficient to postpone considering the details of how to accomplish such a divestiture until such time as it becomes necessary. However, if these details should be included in the Commission's rules, please explain why and suggest specific provisions. If these details should be included in the Commission's rules, specifically should the term "unfair market advantage" be defined in the rules? If so, please suggest such a definition.*

IV. DISCUSSION - SMALL INVESTOR-OWNED TRANSMISSION AND DISTRIBUTION UTILITIES

After the beginning of retail access, an affiliated interest of a small investor-owned T&D utilities can sell electricity to retail consumers, both outside and within the T&D utility's service territory. 35-A M.R.S.A. §3206. Unlike the requirements for competitive providers affiliated with large investor-owned T&D utilities, the Act does not limit the kWhs that may be sold or offered for sale by an affiliate of a small investor-owned T&D utility within that T&D utility's service territory. Further, the Act does not prescribe standards of conduct for small

investor-owned utilities but merely requires the Commission open a rulemaking to determine the extent of separation between small investor-owned T&D utilities and their competitive providers necessary to avoid cross-subsidization and market power abuses. The Act directs the Commission to consider all relevant issues, including: (1) codes of conduct that may be required to ensure the effectiveness of the separation requirement; (2) restrictions on employee activities; (3) accounting standards; and (4) information and service comparability requirements. In order to formulate such rules we seek comment on the following:

Question 34 - *Tentatively it appears to us preferable to have standards of conduct for small investor-owned T&D utilities similar to those adopted for large investor-owned T&D utilities. Please comment on whether this is appropriate. If certain standards or all standards, applicable to large investor-owned T&D utilities are overly burdensome or unnecessary for small investor-owned T&D utilities, please identify and describe why they are onerous or unnecessary.*

Question 35 - *Generally, how should the Commission monitor compliance with requirements of the Act and rules adopted pursuant to the Act for small investor-owned T&D utilities? Is it necessary, or desirable, to have similar monitoring requirements as those adopted for large investor-owned T&D utilities? If so, should all the monitoring requirements appropriate for large investor owned T&D utilities and their affiliates apply to small investor-owned T&D utilities and their affiliates or only certain monitoring requirements? If certain monitoring requirements, or all monitoring requirements, applicable to large investor-owned T&D utilities are unnecessary for small investor-owned T&D utilities, please explain why such monitoring requirements are important for large investor-owned T&D utilities but are not necessary for small investor-owned T&D utilities. Please suggest any specific methodologies or provisions the Commission should adopt to accomplish such monitoring.*

Question 36 - *Does the Commission have the authority to impose administrative penalties on small investor-owned T&D utilities for violating provisions of the Act and/or the corresponding Commission rules? Please fully explain the basis for your response. If the Commission has the authority, should it adopt the same administrative penalty as described in 35-A M.R.S.A. § 3205(5)? If so, please fully explain why the administrative penalty prescribed for large utilities is also an appropriate amount small utilities. If this administrative penalty is not*

appropriate for small utilities, please suggest a penalty amount that is appropriate for small utilities.

Question 37 - *Section 3205(2) specifically prohibits large investor-owned T&D utilities from selling electricity to retail consumers after the beginning of retail access⁶. Section 3206 does not, however, include similar language prohibiting small investor-owned T&D utilities from selling electricity to retail consumers after the beginning of retail access. Nonetheless, the language in this section appears to contemplate that electricity sales to retail consumers would occur through affiliated competitive providers rather than directly by small investor-owned T&D utilities. Please comment on whether the Act's language should be interpreted as only allowing small investor-owned T&D utilities to make retail sales to consumers through affiliated competitive providers.*

V. DISCUSSION - CONSUMER OWNED TRANSMISSION AND DISTRIBUTION UTILITIES

After the beginning of retail access, COUs are allowed to continue selling electricity to retail consumers within their service territory. 35-A M.R.S.A. §3207. They are, however, prohibited from selling electricity outside their service territory, except for incidental wholesale sales necessary to reduce the cost of providing retail service. This section requires the Commission to adopt rules that limit or prohibit the sale of electricity by competitive providers within a COU's service territory if such sales would cause the COU to lose its tax-exempt status under federal or state law. Unlike the requirements for investor-owned T&D utilities, the Commission is not required by the Act to adopt standards of conduct or other provisions for COUs within its rules.

Question 38 - *Should the Commission adopt any provisions to monitor COUs' compliance with the provisions of section 3207(A)? If so, please describe the provisions that should be adopted and why they are appropriate.*

Question 39 - *Should the Commission adopt any provisions to monitor compliance with the provisions of section 3207(B)? If so, please describe the provisions that should be adopted and why they are appropriate.*

⁶As discussed earlier, large investor-owned T&D utilities are allowed to be affiliated with competitive providers that sell electricity to retail consumers.

Question 40 - How should the Commission determine whether wholesale sales are "incidental sales" and "necessary" as used in section 3207(B)? Should the Commission, in its rules, define parameters for "incidental sales" and "necessary" as used in §3207(1)(B)? If so, please suggest any such appropriate parameters.

Question 41 - Please describe in detail the conditions under which retail competition in a COU's service territory would cause it to lose its tax-exempt status under federal or state law. Please provide support in the form of relevant statutes, regulations or cases.

The Commission requests that each COU respond to the following question. However, the Commission welcomes input from other interested persons as well.

Question 42 - Please provide a copy of the appropriate statutes and/or rules that govern COUs' tax-exempt status. Please provide copies of, or describe, any and all documents regarding activities, views, or positions put forth in other states or on the federal level regarding the effect electric restructuring may have on COUs' tax-exempt status.

IV. PARTICIPATION

Interested persons may participate in this inquiry by filing a letter stating their interest in this proceeding no later than April 17, 1998. The letter should be addressed to Dennis L. Keschl, Administrative Director and include the docket number, Docket No. 98-099. The Commission will then issue a service list. All subsequent filings must be served to all interested parties on the service list. Interested persons may file substantive comments by May 4, 1998. We will initiate formal rulemaking(s) before July 1, 1998.

Accordingly, we

O R D E R

1. That an Inquiry shall be opened as described in the body of this Notice;
2. That this Notice shall be sent to all electric utilities in the State of Maine;
3. That this Notice shall be sent to the service list of electric restructuring, Docket No. 95-462;

4. That this Notice shall be sent to the service lists of Docket No. 92-345; Docket No. 95-052; Docket No. 97-116; Docket No. 97-886; Docket No. 96-053; and

5. That this Notice of Inquiry will also be posted on the Commission's website, <http://www.state.me.us/mpuc>

Dated at Augusta, Maine this 7th day of April, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt